

ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

1740 W. ADAMS ST., SUITE 4600, PHOENIX, ARIZONA 85007

PHONE (602) 364-1PET (1738) FAX (602) 364-1039

VETBOARD.AZ.GOV

COMPLAINT INVESTIGATION FORM

If there is an issue with more than one veterinarian please file a separate Complaint Investigation Form for each veterinarian

PLEASE PRINT OR TYPE

FOR OFFICE USE ONLY

Date Received: Sept. 6, 2019

Case Number: 20-19

A. THIS COMPLAINT IS FILED AGAINST THE FOLLOWING:

Name of Veterinarian/CVT: Jerry Oler, DVM

Premise Name: Cornville Pet Clinic

Premise Address: 1220 S. Eastern dr

City: Cornville State: AZ Zip Code: 86325

Telephone: (928) 634-1445

B. INFORMATION REGARDING THE INDIVIDUAL FILING COMPLAINT*:

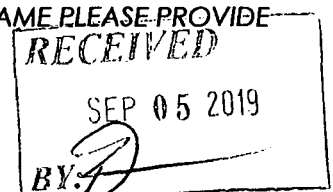
Name: Ralph Miley

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Home Telephone: [REDACTED] Cell Telephone: [REDACTED]

*STATE LAW REQUIRES WE HAVE TO DISCLOSE YOUR NAME UNLESS WE CAN SHOW THAT DISCLOSURE WILL RESULT IN SUBSTANTIAL HARM TO YOU, SOMEONE ELSE OR THE PUBLIC PER A.R.S. § 41-1010. IF YOU HAVE REASON TO BELIEVE THAT SUBSTANTIAL HARM WILL RESULT IN DISCLOSURE OF YOUR NAME PLEASE PROVIDE COPIES OF RESTRAINING ORDERS OR OTHER DOCUMENTATION.



C. PATIENT INFORMATION (1):

Name: Rocky
Breed/Species: shepard mix
Age: 10 yr Sex: male Color: choc

PATIENT INFORMATION (2):

Name: N/A
Breed/Species: _____
Age: _____ Sex: _____ Color: _____

D. VETERINARIANS WHO HAVE PROVIDED CARE TO THIS PET FOR THIS ISSUE:

Please provide the name, address and phone number for each veterinarian.

Catherine Byrnes, DVM
Airpark Animal Hospital
515 Airpark Rd, ste 103
Cottonwood, AZ 86326
ph 928-649-8387

E. WITNESS INFORMATION:

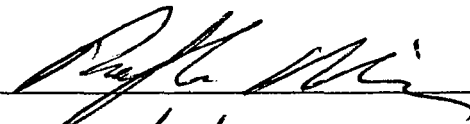
Please provide the name, address and phone number of each witness that has direct knowledge regarding this case.

Julie Martel

ph _____ (hm) ph _____ (cell)

Attestation of Person Requesting Investigation

By signing this form, I declare that the information contained herein is true and accurate to the best of my knowledge. Further, I authorize the release of any and all medical records or information necessary to complete the investigation of this case.

Signature: 
Date: 9/3/19

F. ALLEGATIONS and/or CONCERNS:

Please provide all information that you feel is relevant to the complaint. This portion must be either typewritten or clearly printed in ink.

SEE ATTACHED COMPLAINT (4 PAGES)

ALSO ENCLOSED:

* COPIES OF EXAM NOTES AND BLOOD TESTS FROM JERRY OLER, DVM (4 PAGES)

*COPIES OF EXAM NOTES FROM CATHERINE BYRNES, DVM (2 PAGES)

*COPIES OF RECEIPTS FOR MONIES PAID TO
CORNVILLE PET CLINIC/JERRY OLER (2 PAGES)

I am filing this complaint with the State of Arizona Veterinary Board against Jerry Oler, DVM for what I consider to be gross negligence, malpractice and lack of professional ethics. I am asking for sanctions, disciplinary action and an order to refund the fees I paid to Cornville Pet Clinic, i.e. Jerry Oler, DVM. , as itemized below. My dog Rocky was under Dr. Oler's care from 7/7/19 until he died in 7/24/19.

Rocky quit eating the last week of June, 2019, an obvious sign something was wrong. So I made a first available appointment to see Dr. Oler, which was on 7/7/19. He saw Dr. Oler and this is what followed:

- On 7/7/19, Dr. Oler examined Rocky. Dr. Oler stated "heart beat is faster than it should be. Most dogs come in with a fast heart rate because they are excited, however Rocky's was a lot higher than that" . He also stated that his breathing is also rapid. Both of these factors are notated on his exam notes. He stated that because he swims in Oak Creek (I live near the Creek), that he thought he probably picked up a bacteria, or he thought it could be Valley Fever. Dr. Oler directed the conversation during the 3 to 5 minute exam, around the bacteria and Valley fever. I asked what we needed to do. He said, quote "YOU CAN SPEND A LOT OF MONEY ON TESTS, THEN A LOT OF MONEY ON TREATMENT, AND ALL YOUR GOING TO GET BACK IS THE SAME OLD DOG". I explained Rocky was part of the family, not a farm animal, he was only 10 years old and I wanted him treated with the best treatments. He recommended an antibiotic, Doxycycline 100mg and an appetite stimulant, Mirtazapine 15 mg. I asked what testing he recommended; he said there was no telling what was wrong with him without doing blood tests. He reiterated it was probably an infection from the creek, but if it wasn't, which could be determined with Rocky's response or lack thereof, to the antibiotics, he then was recommending blood tests. Said it could be anything, kidneys, liver or an infection , etc. He said "If Rocky didn't improve in a week after taking antibiotics and appetite stimulants, bring him back in for blood tests "(Dr. Oler never mentioned any other type of testing and certainly never mentioned x-rays, said quote "the place to start was blood tests").
- By 7/14/19, Rocky hadn't improved, so I made an appointment for recommended blood tests on 7/15/19. The Dr. ran CBC, Ehrlichia canine and Coccidiomycosis. Upon leaving the office, I asked his front office staff member Sabrina to verify my cell #, since I was not going to be at home. She said she would notate that I requested a call back with results to my cell phone and verified the # for Dr. Oler to call, not my home land line., with results. She said the Dr would call within 2 days.
- On 7/17/19, as of 2:41 pm, I still hadn't heard anything from Dr. Oler. I called Cornville Pet Clinic, left a message with Sabrina, again, giving her my cell phone #.

(1)

- By the end of business, after hours, I still hadn't heard from Dr. Oler. However, upon arriving at home at 8pm, my roommate Julie Martel, said Dr. Oler called the wrong phone number, the landline and talked with her. Julie was not Rocky's owner, nor did she order the tests or accompany me on either visit to Cornville Pet Clinic. She indicated that Dr. Oler said all the tests were negative, nothing wrong with him, must be the bacteria that he picked up at the creek, said Dr. Oler said "just finish giving him the antibiotic, and he should be ok". She said she asked if he should have additional testing, she said he said "No, all the tests came back normal". Julie stated that Dr. Oler and her discussed that maybe he was just depressed, and that's why he wasn't eating. Still upset that Dr. Oler didn't call me (he was my dog, not Julie's), but I was relieved all was good.
- On 7/23/19, Rocky was still the same, not doing well, I called Cornville Pet Clinic and made an appointment for the following day, 7/24/19, in the afternoon.
- Later in the day, my sister, Cynthia Miley, MD., a medical doctor in Tucson, arrived at my house for a visit. She asked what was wrong with Rocky. I gave her the history of the Cornville Vet visits, treatments, etc. She said "Well if the DVM said that he had a fast heart beat and I can see him breathing rapidly, he must be having heart trouble". She added "he is breathing rapidly to make up for the lack of oxygen that his heart is not getting to the rest of his body". She added that he probably wasn't eating because he didn't have the energy needed to digest his food, due to the lack of oxygen that his heart was failing to supply to his body. As soon as she said that, it made sense to me. I drove to Cornville Pet Clinic, got her copies of the blood tests and gave them to my her. She reviewed them, said they are similar to humans, and all looked normal, but there is no blood tests available for the heart function. She again said, "it looks like it must be his heart". She recommended I immediately take him to a different vet.
- I immediately called Airpark Animal Hospital in Cottonwood, Az. They said no appointment available, but after explaining the situation, they agreed that if I dropped him off at 8 am the next day, 7/24/19, the dvm would take a look in between appointment. At this point I was almost in a panic state. I was relieved they would see him the next day.
- On 7/24/19, I dropped off Rocky at 8:10 am. At around 9:30 am, Airpark Animal Hospital called and said heartworm test was negative, but they recommended x-rays, on heart and lungs. I naturally approved. At around 11 am, Dr. Catherine Byrnes had called me with some very bad news. Said Rocky went into cardiac arrest.. They tried CPR and tried to resuscitate him, but to no avail. **He had died.** She said x-rays showed that Rocky's heart was very sick and enlarged. Lungs were beginning to fill with fluid. He could have continued to live, for an unknown time, but with guarded supervision and medication.

- On 8/12/19, I had a subsequent interview with Dr. Oler. I expressed my displeasure with his services. He admitted that he was "a swing and a miss". Said "Sorry I lost my dog" .He also admitted that he probably said during the initial exam " You can do a bunch of testing, then treat the him, and all your going to get back is the same old dog". I explained to him that I know nothing about the medical profession, that's why people like myself take our beloved pets to a professional Dr. That we rely on their expertise and education to do what's right for our pets. That a "swing and a miss" and his uncaring approach was unacceptable. Dr. Oler and his assistant threw a bunch of medical terms at me that I didn't understand. He scolded me that I didn't have an autopsy done. This is a DR that cares??? At the end, they said he was going to die anyway and he had probably been sick for a while. I asked him why he didn't recommend proper testing like the other vet did, in which I approved without hesitation. He told me it was up to me to have asked for the x-rays, ultra sounds or any other tests that I wanted. That he put it in his notes. I reminded him that he never mentioned x-rays, just tests. That I asked him what tests, and that he said blood tests and for Valley fever, I reminded him I was not medically trained, that I was paying him for educated and professional services, and it wasn't up to me to recommend tests, that's why I brought Rocky to him. I then asked for a refund of his fee's, stating that it wasn't that I needed the money, it was that I felt he didn't deserve to profit from, malpractice and such a misguided treatment of my dog, in which lack of proper diagnosis and treatment resulted in his death. He refused to refund any fees. This conversation was recorded by me and is available for review.

Summary:

- Rocky was in Dr. Oler care since, 7/7/19 up until he died on 7/24/19. Dr. Oler totally misdiagnosed Rocky's ailment as a bacterial infection. I believe Dr. Oler should have recognized the signs of rapid breathing and rapid heart rate as a heart issue, as Dr. Celeste Flannery DVM and Dr. Cynthia Miley, my sister, did so instantly.
- As Rocky's owner, I followed Dr. Oler's instructions of care, giving him his prescribed medication daily. I thought that was going to be sufficient to get my Rocky healthy
- I trusted Dr. Oler, and that he was recommending proper care and testing.
- On 7/17, when he called Julie Martel with blood test results, Dr. Oler indicated that he was healthy, discussed depression, and he didn't recommend further testing
- Rocky died on 7/24/19, at Airpark Animal Hospital. They said he has a sick heart, went into cardiac arrest at the hospital
- On 8/12/19, Dr Oler admitted that his diagnosis and treatment was "a swing and a miss", in a recorded conversation

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- During the period of the last week of June until his death, I force fed him daily, in order to sustain weight and health. Dr. Oler was fully aware of this.
- I had trusted that Jerry Oler, DVM, was properly exercising care and diligence in the testing and treatment of my "best friend" Rocky. His lack of care resulted in his death, at that point in time.

Dr. Oler approach to the care and treatment of Rocky was flawed from the beginning. His approach was a mere shot in the dark. The warning signs of a sick heart were there, and were easily identified by my sister, a human Dr., and Airpark Animal Hospital, immediately upon examination. Not so with Dr. Oler. His negligent professional diagnosis and subsequent treatment for an infection that didn't exist, his lack of compassion and approach to proper care based on Rocky's age, is a clear case of malpractice. Again, I am asking the Arizona State Veterinary Board for sanctions, disciplinary action and for an order for a full refund of my entire fee's paid to Cornville Pet Clinic. I have attached copies of all tests results, exam note from both Dr. Oler and Airpark Animal Hospital in addition to receipts for bills paid at Cornville Pet Clinic.

Ralph King 9/3/19

④

Reference # 20-19
In Re: Jerry Oler, DVM

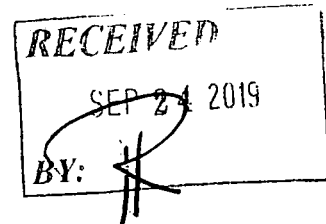
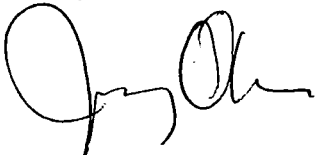
This letter is in response to the complaint issued by Ralph Miley about his 10yr old shepx, Rocky.

Rocky was presented 7/7/19 for inappetence for one week with a history of probably eaten a bone 3 weeks ago on a hike and an occasional cough/retch. Rocky presented lethargic but alert & responsive with an increased heart rate. Discussion involved a gambit of possible causes. Diagnostics were recommended which included lab tests and xrays. Mr. Miley declined all testing at this time. I recommended to atleast start an antibiotic & appetite stimulant (when your hands are tied by the owner, you are unable to get a good diagnosis). Mr. Miley chose to wait a week with no improvement of pet before returning to allow one test (labs). The results were mostly normal. I contacted Mr. Miley's home with the results and a recommendation for referral to an internal medicine clinic. The person I spoke with stated Rocky was more perky but still depressed & eating small amounts of food. Another week later, Mr. Miley called for an appointment. At that time goes to another clinic for further diagnostics. During the stress of the tests, Rocky passed away.

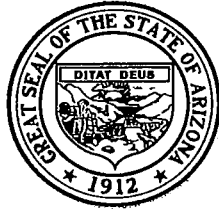
On 8/12/19, Mr. Miley came in for a face to face discussion about Rocky's case. Mr. Miley was obviously upset and wanted answers. He pointed out his sister is an MD and knew immediately Rocky had a heart condition. I reviewed the record of events & his lack of willingness to proceed with diagnostic procedures early which he denied. I reviewed the photo of the thoracic xray on his phone, as we were declined records from Airpark, with the enlarged heart and deviated trachea. This is a fatal condition with a grave prognosis.

Our goal is to do no harm and provide as many answers as we can with the information we are allowed to gather. In this case the bloodwork was the information we were allowed to gather. It is often difficult for owners to accept the death of their pet for any reason and often times need to place blame. In this case I feel the condition was beyond any of our ability to fix and the final attempt at imaging was too much stress for Rocky to endure. I would imagine he informed the attending veterinarian at Airpark the same about the "obvious heart condition" that his sister pointed out and they proceeded from there since the notes he had from them showed the heart and lungs auscultated normally as well.

Jerry Oler, DVM



DOUGLAS A. DUCEY
- GOVERNOR -



VICTORIA WHITMORE
- EXECUTIVE DIRECTOR -

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INVESTIGATIVE COMMITTEE REPORT

TO: Arizona State Veterinary Medical Examining Board

FROM: PM Investigative Committee: Adam Almaraz - Chair
Amrit Rai, DVM
Christine Butkiewicz, DVM
William Hamilton
Brian Sidaway, DVM

STAFF PRESENT: Tracy A. Riendeau, CVT – Investigations
Dawn Halbrook – Compliance Specialist
Mary Williams – Assistant Attorney General

RE: Case: 20-19

Complainant(s): Ralph Miley

Respondent(s): Jerry Oler, DVM (License: 4428)

SUMMARY:

Complaint Received at Board Office: 9/6/19

Committee Discussion: 11/5/19

Board IIR: 1/15/20

APPLICABLE STATUTES AND RULES:

Laws as Amended August 2018

(Lime Green); Rules as Revised

September 2013 (Yellow)

On July 7, 2019, "Rocky," a 10-year-old male Shepherd mix was presented to Respondent for approximately one week. Antibiotics and an appetite stimulant were dispensed and the dog was discharged with instructions to return for blood work in one week if no improvement.

On July 15, 2019, due to no improvement the dog was presented to Respondent for a recheck. Blood was collected for testing. No abnormalities were identified and it was recommended to finish the antibiotics.

On July 24, 2019, the dog was presented to Airpark Animal Hospital for a second opinion. After thoracic radiographs were performed, the dog arrested and passed away. Radiographs revealed an enlarged heart and fluids in the dog's lungs.

Complainant was noticed and appeared.

Respondent was noticed and appeared telephonically. Counsel, W. Reed Campbell appeared.

The Committee reviewed medical records, testimony, and other documentation as described below:

- Complainant(s) narrative: *Ralph Miley*
- Respondent(s) narrative/medical record: *Jerry Oler, DVM*
- Consulting Veterinarian(s) narrative/medical records: *Catherine Byrnes, DVM*
- Witness(es) narrative: *Julie Martel*

PROPOSED 'FINDINGS of FACT':

1. On July 7, 2019, the dog was presented to Respondent due to not eating for approximately one week. Complainant reported that about 3 weeks prior, while on a hike the dog found a bone and most likely ate it; the dog goes to the river daily. Upon exam, the dog had a weight = 49.6 degrees, a temperature = 101.8 degrees, a heart rate = 150bpm and a respiration rate = 60rpm. Respondent noted that the dog had lenticular sclerosis, moderate tartar, and abdomen palpated non-painful. The heart and lungs sounded normal; the dog was breathing rapidly, was inappetent and had an occasional cough/retch. Respondent also noted a lipoma like mass on the right ventral lateral thorax.

2. According to Respondent, he recommended lab work including leptospirosis and valley fever; Complainant declined. Respondent stated in his narrative that radiographs were also recommended – not written in medical record. According to Complainant, Respondent advised that the dog's heartbeat was faster than it should be and his breathing was also rapid. Respondent thought the dog had a bacteria that was picked up from swimming in the creek or possibly valley fever. When Complainant asked what Respondent recommended, he said the dog could have anything and they could start with antibiotics and see how the dog responded. If no improvement, Complainant was to bring the dog back for blood work. The dog was discharged with Doxycycline and Mirtazapine.

3. On July 15, 2019, the dog was presented to Respondent's premise for blood collection. Complainant reported that the dog was still not eating; he was force feeding the dog. The dog had a weight = 48.8 pounds and a temperature = 101.6 degrees; no exam was performed – appears to have not been seen by a veterinarian. Complainant asked that Respondent call his cell number.

4. On July 17, 2019, Complainant stated that since he had not heard from Respondent, he called and left a message asking Respondent to call him on his cell phone regarding the dog's blood results.

5. Later that day, Respondent called Complainant's home number and spoke with Complainant's roommate regarding the dog's lab results. He advised that the results were mostly normal and recommended an internal medicine specialist. Ms. Martel, Complainant's roommate, told him that the dog was eating small amounts of food and appeared perkier but was still depressed.

6. According to Ms. Martel, Respondent relayed the blood results were negative and did not recommend further testing. She advised that the dog was still not eating and was lethargic. Respondent recommended continuing the medication until finished. Ms. Martel believed she

gave Respondent Complainant's phone number so he could discuss the dog's blood work directly with him.

7. Complainant stated that his roommate spoke to Respondent who advised the blood work was negative, finish the antibiotic and the dog should be ok.

8. On July 23, 2019, the dog was still not doing better therefore he called Respondent's premise to schedule an appointment for the following day. Later that day, Complainant's sister, an MD, visited Complainant. She suggested based on the dog's symptoms that he could have a heart condition. Complainant showed her a copy of the dog's blood work; she felt the dog had a heart problem since no abnormalities were seen on the blood work and recommended Complainant take the dog elsewhere for evaluation.

9. On July 24, 2019, Complainant dropped the dog off at Airpark Animal Hospital and was examined by Dr. Byrnes. According to Dr. Byrnes, Complainant had the dog evaluated at Cornville Pet Clinic and was diagnosed with leptospirosis and was on doxycycline and mirtazapine. The dog had a cough for 3 months and the dog was anorexic and lethargic. Complainant was concerned the dog had heartworm.

10. Dr. Byrnes examined the dog and found a thin dog, with evidence of muscle wasting. He had significant tachypnea and tachycardia with normal sinus rhythm. Dr. Byrnes initial differential diagnosis was primary cardiac disease, including pericardial effusion, primary pulmonary disease, pleural effusion, or other intra-thoracic disease. A treatment plan including an in-house heartworm test and radiographs were approved by Complainant. Radiographs revealed a significantly enlarged cardiac silhouette with dorsal elevation of the trachea and a tall cardiac waist. The cardiac silhouette on the VD view appeared quite globoid. There was loss of serosal detail noted in the abdominal views, but considered no significant findings. No pleural effusion or significant pulmonary disease was appreciated. Heartworm test = negative.

11. Due to the radiographic findings, a brief ultrasound was performed with the dog standing. No pericardial effusion was present. The ventricles seemed enlarged. Primary cardiac disease was suspected. Dr. Byrnes was going to recommend a full cardiac work-up but the dog arrested before she could contact Complainant with her findings or institute treatment recommendations. The dog could not be resuscitated and Complainant was informed of the dog's unexpected arrest.

COMMITTEE DISCUSSION:

The Committee discussed that Complainant brought the dog to Respondent due to anorexia and did not express concern with the dog's breathing or cough. Respondent noted the dog had an elevated heart rate and was breathing rapid but it could have been due to the stress of the visit. No diagnostics were run and Respondent was making judgments with the information he had at that time. There were no concerns after ausculting the dog's heart and lungs.

The Committee commented that based on Respondent's notes in the medical record that the dog was breathing rapidly with occasional cough/retch, therefore radiographs were indicated. Pet owners go to a veterinarian to be told what to do, not to tell the veterinarian what should be

done. The veterinarian is advocating for the pet and therefore should present the best course of action. It is then up to the pet owner to make an informed decision regarding their pet's care. The Committee felt that did not happen in this case.

Additionally, when the dog returned for blood work 8 days later, Respondent did not examine the dog. The Committee felt that a lot can change with an animal's condition in that amount time. The Committee did not feel Respondent did his due diligence.

Based on the notes in the medical record – not eating, tachycardia, rapid breathing – heart disease should have been on the list of differentials. Valley Fever was on the list of differentials which would warrant radiographs. Respondent advised the Committee that he verbally offered radiographs – “labs and rads” - however it is not noted in the medical record and the Committee felt that a lay person may not understand that term if that is what Respondent told Complainant.

The Committee expressed concerns that Respondent stated he called Complainant's home and thought he was speaking to the Complainant with the blood results; that he spoke to a man. Complainant's roommate is a woman. Respondent did not verify who he was speaking with to ensure he was relaying the dog's blood results to the correct person.

After the dog passed away, the Committee had concerns with Respondent's conversation with Complainant; he told Complainant that he could have asked about diagnostics or referral to a specialist.

COMMITTEE'S PROPOSED CONCLUSIONS of LAW:

The Committee concluded that possible violations of the *Veterinary Practice Act* occurred.

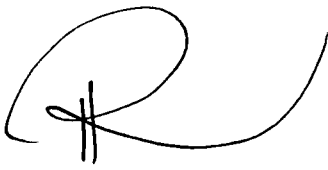
COMMITTEE'S RECOMMENDED DISPOSITION:

Motion: It was moved and seconded the Board find:

ARS § 32-2232 (12) as it relates AAC R3-11-501 (1) failure to provide professionally acceptable procedures by not recommending radiographs and not communicating with Complainant in a professional manner, in a conversation that occurred after the dog passed away, with respect to who's responsibility it was to recommend diagnostic testing.

Vote: The motion was approved with a vote of 5 to 0.

The information contained in this report was obtained from the case file, which includes the complaint, the respondent's response, any consulting veterinarian or witness input, and any other sources used to gather information for the investigation.

A handwritten signature in black ink, appearing to be 'TR' with a large loop and a vertical stroke through the center.

Tracy A. Riendeau, CVT
Investigative Division

DOUGLAS A. DUCEY
GOVERNOR



VICTORIA WHITMORE
EXECUTIVE DIRECTOR

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IN ACCORDANCE WITH A.R.S. § 32-2237(D): "IF THE BOARD REJECTS ANY RECOMMENDATION CONTAINED IN A REPORT OF THE INVESTIGATIVE COMMITTEE, IT SHALL DOCUMENT THE REASONS FOR ITS DECISION IN WRITING."

At the January 15, 2020 meeting of the Arizona State Veterinary Medical Examining Board, the Board considered the recommendations of the Investigative Committee in regards to case number 20-19 In Re: Jerry Oler, DVM.

The Board considered the Investigative Committee's Findings of Fact and Conclusions of Law:

ARS § 32-2232 (12) as it relates AAC R3-11-501 (1) failure to provide professionally acceptable procedures by not recommending radiographs and not communicating with Complainant in a professional manner, in a conversation that occurred after the dog passed away, with respect to who's responsibility it was to recommend diagnostic testing.

Following discussion, the Board voted to modify the Investigative Committee's Conclusions of Law and find the following:

A.R.S. § 32-2232 (12) as it relates to A.A.C. R3-11-501 (1) failure to provide professionally acceptable procedures by not recommending radiographs and following up to ensure proper diagnostics were being performed on the dog.

Respectfully submitted this 19TH day of February, 2020.

Arizona State Veterinary Medical Examining Board

A handwritten signature in black ink, appearing to read "Jim Loughhead".

Jim Loughhead - Chair